

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MICHAEL ANDERSON BALENTINE,

Plaintiff,

v.

9:22-CV-0285
(MAD/ML)

JANE RED, Correction Officer *et al.*,

Defendants.

APPEARANCES:

MICHAEL ANDERSON BALENTINE
19-B-1348
Plaintiff, *pro se*
Collins Correctional Facility
P.O. Box 340
Collins, NY 14034

MIROSLAV LOVRIC
United States Magistrate Judge

ORDER

Plaintiff Michael Anderson Balentine ("plaintiff") commenced this action by filing a pro se civil rights complaint pursuant to 42 U.S.C. § 1983 ("Section 1983"), together with an application to proceed in forma pauperis. Dkt. No. 1 ("Compl."), Dkt. No. 4 ("IFP Application"). By Decision and Order filed on May 3, 2022 (the "May Order"), this Court granted plaintiff's IFP application and found that plaintiff's Eighth Amendment claims, assault and battery claims, and claims of intentional infliction of emotional distress against J. Red and J. Blonde, defendants whose identities were not known, survived review and required a response. Dkt. No. 10. The Court instructed the Clerk of the Court to send a copy of the

complaint and the May Order to the Office of the Attorney General. *Id.* at 13. The Attorney General's Office was instructed to attempt to ascertain the identity of the defendants and addresses where they could be served and to provide that information. *Id.*

On May 13, 2022, the Attorney General's Office responded to the May Order. Dkt. No. 8. In an Order filed on June 1, 2022 (the "June Order"), the Court directed the Clerk of the Court to forward a copy of the response to plaintiff. Dkt. No. 9. Plaintiff was directed as follows:

It is ordered that Plaintiff has thirty days from the date of this Order to file an amended complaint that correctly identifies the Doe Defendants named in his original Complaint. In an effort to assist Plaintiff in drafting the proposed amended complaint, the Clerk shall forward to Plaintiff a copy of his Complaint (Dkt. No. 1). Plaintiff may identify the Doe defendants by handwriting the names in the appropriate locations throughout on the copy of the Complaint and indicate in the caption of the document that it is an amended complaint. Once Plaintiff has made these changes to the copy of the Complaint, captioned it as his amended complaint, and signed the proposed amended complaint, he should submit it to the Court for review. Plaintiff is advised that, if he should fail to identify the Doe Defendants, his action will be dismissed without prejudice.

Dkt. No. 9.

On June 8, 2022, plaintiff submitted an amended complaint in accordance with the May Order and June Order.¹ Dkt. No. 10. Upon review, the amended complaint is accepted for filing and is the operative pleading in this action.

WHEREFORE, it is hereby

ORDERED that the amended complaint (Dkt. No. 10) is **ACCEPTED** for filing and is the operative pleading in this action; and it is further

¹ Because defendants have not yet responded, the pleading was filed as of right pursuant to Rule 15(a).

ORDERED that the Clerk shall revise the docket to add (i) "Caleigh Shurgot" as a defendant in place of defendant "Jane Red;" and (ii) "Ashley Greene" as a defendant in place of defendant "Jane Blonde;" and it is further

ORDERED that the Clerk shall issue summonses and forward them, along with copies of the amended complaint, to the United States Marshal for service upon the defendants. The Clerk shall forward a copy of the summonses and amended complaint to the Office of the Attorney General, together with a copy of this Decision and Order; and it is further

ORDERED, that a response to the amended complaint be filed by the defendants, or their counsel, as provided for in the Federal Rules of Civil Procedure;

ORDERED, that all pleadings, motions and other documents relating to this action must bear the case number assigned to this action and be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367. **Any paper sent by a party to the Court or the Clerk must be accompanied by a certificate showing that a true and correct copy of same was served on all opposing parties or their counsel. Any document received by the Clerk or the Court which does not include a proper certificate of service will be stricken from the docket.** Plaintiff must comply with any requests by the Clerk's Office for any documents that are necessary to maintain this action. All parties must comply with Local Rule 7.1 of the Northern District of New York in filing motions. **Plaintiff is also required to promptly notify the Clerk's Office and all parties or their counsel, in writing, of any change in his address; their failure to do so will result in the dismissal of his action;** and it is further

ORDERED that the Clerk of the Court shall serve a copy of this Decision and Order on plaintiff in accordance with the Local Rules.

DATED: June 28, 2022

Binghamton, New York



Miroslav Lovric
Miroslav Lovric
U.S. Magistrate Judge